

JACK J. GRYNBERG

IBLA 80-879

Decided March 12, 1981

Appeal from decision of the Eastern States Office, Bureau of Land Management, denying assignment of operating rights for oil and gas lease ES 9589.

Affirmed.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental because, although the lessee claims to have mailed timely the rental together with other payments which were received, the rental check cannot be found.

2. Administrative Authority: Estoppel -- Estoppel -- Federal Employees and Officers: Authority to Bind Government -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the Government from regarding the lease as having terminated.

3. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Termination

No assignment can be approved for a terminated oil and gas lease.

APPEARANCES: Phillip D. Barber, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Jack J. Grynberg has appealed from the July 18, 1980, decision of the Eastern States Office, Bureau of Land Management (BLM), denying the assignment of operating rights for oil and gas lease ES 9589 and holding that the lease terminated March 1, 1978, for failure to pay annual rental.

Appellant contends that in December 1977 he mailed the Eastern States Office two checks in the same envelope in payment for rentals on two leases due in March 1978. The check covering one lease was cashed, but the check covering lease ES 9589 was not. Appellant asserts that the loss of the check was due to error or neglect by BLM and that the decision that the lease terminated is in error. Appellant has also submitted copies of canceled checks for annual rental payments for the terminated lease for periods beginning March 1, 1979, and March 1, 1980. He contends that the acceptance of these checks estops BLM from denying the validity of the lease.

[1] The Mineral Leasing Act provides that, upon failure of a lessee to pay rental on or before the anniversary date of an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall terminate by operation of law. 30 U.S.C. § 188(b) (1976). Although appellant claims that he submitted the rental payment for the subject lease with rental payment for another lease, the rental payment for the subject lease cannot be found. We have previously held that an uncorroborated statement that a missing document was sent with a document which was received is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue. Metro Energy, Inc., 52 IBLA 369 (1981); Charles J. Babington, 36 IBLA 107 (1978); W. J. Langley, 32 IBLA 18 (1977); David F. Owen, 31 IBLA 24 (1977). An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental where, although the lessee claims to have mailed the rental together with other payments which were received, the rental cannot be found. Joan Witmer, A-30986 (Mar. 3, 1969). Appellant's check could just as easily not have been put in its envelope when mailed as have been misplaced by the land office. Id.

[2] This Department has no authority under the Mineral Leasing Act to reinstate an oil and gas lease which has terminated by operation of law unless payment is received within 20 days after the date of termination. 30 U.S.C. § 188(c) (1976). The erroneous acceptance of rental payments in later years cannot create such authority. No continuation of tenure can arise by estoppel from the acceptance of such

payments, because an administrative determination running contrary to law does not constitute an estoppel against the Federal Government. Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 592 (10th Cir. 1970).

[3] Because no assignment can be approved for a terminated oil and gas lease, BLM properly denied assignment of the operating rights for the subject lease. See Reichhold Energy Corp., 40 IBLA 134 (1979), aff'd, Reichhold Energy Corp. v. Andrus, No. 79-1274 (D.D.C. filed April 30, 1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

